

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JACYNDA J. LECH,

Defendant.

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8:10CR358

ORDER

This matter is before the court on defendant's Motion to Determine Mental Competency (#23) pursuant to 18 U.S.C. § 4241. The motion was first heard on December 15, 2010. During the hearing, counsel for the defendant made representations to the court and adduced an evaluation that the defendant's competency to stand trial was in question. The court found, in its Order (#35) that, pursuant to law, the defendant should be committed to the custody of the Attorney General for placement in a suitable facility to be examined for a reasonable period of time, not to exceed thirty days, to determine whether she is suffering from a mental disease or defect rendering her mentally incompetent to the extent that she is unable to understand the nature and consequences of the proceedings against her or to assist properly in her defense. The court further ordered that a psychiatric or psychological report be filed with copies provided to counsel.

The court received the report on April 4, 2011. The diagnostic impression of Dr. Ryan Nybo, Psy.D., a forensic unit psychologist, concluded the defendant demonstrated an adequate ability to understand the nature and consequences of court proceedings and a sufficient ability to properly assist counsel in her defense.

On April 27, 2011, hearing on the motion was held. The government was represented by Michael Norris, Assistant United States Attorney. The defendant was present and represented by Richard McWilliams, Assistant Federal Public Defender. Dr. Ryan Nebo testified and his report (Ex. 1) was admitted. Dr. Kirk Newring testified and his report (Ex. 104) was admitted. Several lay witnesses testified. Argument was heard and the court took the matter under advisement.

After reviewing the evidence, I find that the government has proved by a preponderance of the evidence that the defendant, Jacynda Lech, is competent. While both experts possess a basis for their opinions on competency, I find the opinion of Dr. Nybo to be more credible based upon his exposure to broader data, including more face-time with the defendant, observations during defendant's confinement, and his review of at least three of defendant's recorded telephone calls. Additionally, I note the evidence demonstrates the defendant is a high school graduate and has passed written examinations for a Nebraska driver's license and certification as a nurse's assistant.

IT IS ORDERED:

1. Defendant Jacynda J. Lech's Motion to Determine Mental Competency (#23) is denied. The defendant is found to be competent as she is able to understand the nature and consequences of the proceedings against her and assist properly in her defense, pursuant to 18 U.S.C. § 4241.

2. The case will be progressed by separate order.

3. A party may object to a magistrate judge's order by filing an "Objection to Magistrate Judge's Order" within 14 days after being served with the order. The objecting party must comply with all requirements of NECrimR 59.2.

Dated this 2nd day of May 2011.

BY THE COURT:

s/ F.A. Gossett, III
United States Magistrate Judge